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31761120623202

MINISTRY OF TREASURY, ECONOMICS
AND INTERGOVERNMENTAL AFFAIRS

LOCAL GOVERNMENT DIVISION

BULLETIN NO: 1

HIGHLIGHTS

OF

THE MUNICIPAL ELECTIONS ACT, 1977

W. DARCY McKEOUGH, MINISTER

A. R. DICK, DEPUTY MINISTER

JANUARY 1978

This bulletin has been prepared for the guidance of members of the staff of Ontario municipalities in carrying out their duties.

Wherever a provision of any statute affects a matter discussed in this bulletin, the reader should refer to the statute itself, ensuring that he has an up-to-date version with all amendments.

Municipalities should consult a solicitor for assistance in interpreting the provisions of the statutes where any question arises as to their interpretation.

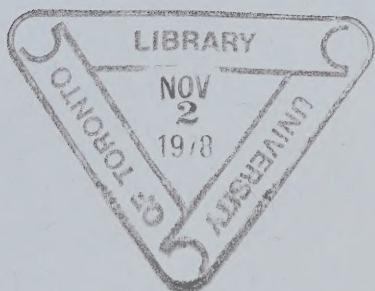


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1. INTRODUCTION

1.1 On December 16, 1977, The Municipal Elections Act, 1977 came into force. This new act repeals The Municipal Elections Act, 1972 as amended.

1.2 Several of the procedures for the conduct of municipal elections have been revised in order to improve the system and eliminate any confusion that surrounded certain sections of the previous legislation. It is expected that ancillary changes will be made to various acts following the change in section 9 of The Municipal Elections Act to the term of office.

1.3 This paper deals only with the major differences between The Municipal Elections Act, 1977 and its predecessor The Municipal Elections Act, 1972. It should be read in conjunction with a copy of the new act for best comprehension. This paper is not meant to be a substitution for reference to the new act. While every precaution has been taken in the preparation of this paper, the clerk is strongly advised to refer directly to the act to ensure accuracy and completeness.

1.4 The more significant changes will be dealt with in the order in which they appear in the legislation. They are:

- (a) Definition of Holiday
- (b) Appointment of Candidate as Deputy Returning Officers, poll clerks or election assistants
- (c) Clerk's delegation of statutory authority and responsibility
- (d) Term of Office and Polling Day
- (e) Qualification period for electors
- (f) Eligibility to Vote on Money By-laws
- (g) Notice of deletion of name from list of voters
- (h) Nomination Day
- (i) Form of Ballot - Occupation of Candidate
- (j) Employees to receive three clear hours to vote

- (k) Elimination of Poll Book
- (l) Voting by Proxy
- (m) Emergency Powers of Clerk
- (n) Recount Procedures
- (o) Use of French Language Notices
- (p) Election expenses of candidates
- (q) Votes under Liquor Licence Act, 1975.

1.5 The balance of this paper will review each of the above changes. The pertinent section of the new act is listed immediately below the section title for convenient reference to the legislation and where applicable the appropriate section of The Municipal Elections Act, 1972 is shown in *(italics)*.

2. HIGHLIGHTS OF THE MUNICIPAL ELECTIONS ACT, 1977

Holidays Defined Section 1(15)

2.1 Section 120 of the Act states: "Subject to subsection 2 of section 11, where any day specified in this Act for the undertaking of any proceeding pertaining to an election falls on a holiday, the day specified shall be deemed to be the immediately preceding day which is not a Sunday or a holiday." Subsection 2 of section 11 states that where polling day as specified in subsection (1) [second Monday in November] falls on a holiday, polling day shall be the next succeeding day that is not a holiday, but the day for undertaking of any other proceeding pertaining to the election shall not be affected thereby.

2.2 For the purposes of this Act, section 1(15) defines holidays as those defined in The Interpretations Act and as of January 1978 they are as follows:

"Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, the birthday or the day fixed by proclamation of the Governor General for the celebration of the birthday of the reigning Sovereign, Victoria Day, Dominion Day, Labour Day, Remembrance Day, and any day appointed by proclamation of the Governor General or the Lieutenant Governor as a public holiday or for a general fast or thanksgiving, and when any holiday, except Remembrance Day, Falls on a Sunday, the day next following is in lieu thereof a holiday;"

2.3 This new section should eliminate any confusion that existed in the past.

Candidates Not To Act As D.R.O.'s, Poll Clerks, Election Assistants, Assistant Revising Officers Or Assistant Returning Officers Section 4(1); 4(5) [Section 4(1); 4(5)]

2.4 Section 4(1) provides that the clerk shall appoint a deputy returning officer and poll clerk for each polling place. In the past there was some confusion as to whether or not a candidate could be appointed as a deputy returning officer or poll clerk. Section 4(1) now clearly prohibits a candidate from being appointed to either position.

2.5 Section 4(5) provides that the clerk may appoint election assistants, assistant returning officers and assistant revising officers to assist him in the performance of his duties. This section now also provides that a candidate is not eligible for such appointments.

Clerk May Delegate Certain Statutory Rights and Duties Section 4(6)

2.6 This is a new section which provides the clerk with the authority to delegate such rights and duties in the preparation and conduct of an election as he considers necessary to his assistant returning officers or assistant revising officers.

2.7 As an example, the clerk may authorize an assistant revising officer to carry out his duties under section 28 dealing with revisions to the voters list.

2.8 Any delegation of authority must be in writing, signed by the clerk, with a copy given to the assistant revising officer or assistant returning officer as the case may be. It is suggested that the clerk also retain a copy for the record.

Term of Office Section 9
Polling Day - Second Monday In November Section 11
[Section 11]

2.9 Probably the most significant changes are the advancement of the polling day to the second Monday in November and the moving forward of the commencement of the term of office to the first day of December. Previously, polling day was the first Monday in December. It will now be the SECOND MONDAY IN NOVEMBER. For the 1978 elections that is NOVEMBER 13.

2.10 This change will require the clerk to begin his election preparations three weeks earlier.

2.11 The voters list will be given to the clerk by the assessment commissioner on the 31st day after the commencement of the enumeration. For the 1978 election, the clerks will receive the voters list by October 6 (section 22).

2.12 The last date for posting the preliminary list is October 21, 1978 [section 25(2)(3)]. Nomination day will be October 23, 1978 (section 35). The last date for receipt of applications to revise the list is October 27, 1978 [section 25(3)].

2.13 Statutory advance polls will be held November 4, 1978 (section 66).

Qualification Of Electors Sections 12 and 13
[Sections 12 and 13]

2.14 The period of qualification for resident and non-resident electors in the past was from the Tuesday following the first Monday in September of an election year to the second Tuesday in October in an election year. The new Act provides for an extension of this period to the Friday in October that precedes polling day by seventeen days. (October 27 for the 1978 elections.)

2.15 So far as the clerk is concerned, this change will have little or no effect on procedures for the election.

Qualifications To Vote On Money By-laws Section 16
[Sections 15 and 16]

2.16 This section now provides that all qualified electors may vote on a money by-law. Previously only landowners, corporate nominees and long-term tenants could vote on money by-laws. Corporations are no longer allowed to appoint nominees to vote on money by-laws.

Deletion Of Name From Voters List Section 28(7)
[Section 26]

2.17 The Act provides that where the name of a person is deleted from the preliminary list of electors the clerk must give a notice stating the reason for the deletion as well as advising of the voting procedures under section 33 and 56. This notice will make the person aware of the procedure for applying for a certificate to vote if he feels his name has been wrongly removed from the list.

Nomination Day Section 35

[Section 33]

Insufficient Number of Candidates Section 37(5)(7)

2.18 As a result of bringing polling day forward, it is necessary also to advance the nomination day. Nomination day is the Monday twenty-one days prior to polling day. In the 1978 election this will be October 23.

2.19 This section was also changed to provide that nomination papers could be filed during the clerk's regular office hours in the week prior to nomination day. As well, of course, nomination papers may be filed with the clerk on nomination Day between 9 A.M. and 5 P.M.

2.20 With regard to nominations, the clerk should attempt to avoid any delays in the posting of the preliminary list which results in the posting taking place on the last day allowed [OCTOBER 21, 1978]. This would make it difficult to check the nominators on nomination forms filed during the week of October 16, 1978.

2.21 Previously, where there was a newspaper having general circulation in the municipality, the clerk was required to publish a notice of the date and times for filing nominations at least six days prior to nomination day. The new Act provides for seven days notice.

2.22 In those municipalities where a weekly newspaper is used, the clerk will want to exercise care in ensuring the notice is presented to the newspaper in sufficient time to be published in the edition that appears at least seven days prior to nomination. In 1978 this means that the notice must be published by October 16.

2.23 A new provision has been added to the Act to deal with the situation where the number of candidates nominated for an office is not sufficient to fill the number of vacancies. The clerk may receive and certify additional nominations for the office for which there was an insufficient number of candidates. Such additional nominations are to be received on the Wednesday following nomination day. The hours between which these additional nominations may be filed are 9:00 o'clock in the forenoon and 5:00 o'clock in the afternoon. For the 1978 elections these additional nominations would be received on Wednesday, October 25.

2.24 In addition the clerk is required to post a list showing the names of additional candidates nominated under this new procedure by 4:00 o'clock in the afternoon of the Thursday following nomination day.

2.25 There are two additional changes in the nomination procedure that the clerk must consider. Firstly, the clerk had until 5:00 o'clock on the day following nomination day to examine the nomination papers filed on nomination day to see that the requisite number of qualified nominators had signed the paper.

2.26 This has now been changed to provide that the examination by the clerk must take place prior to 4:00 o'clock on the day following nomination day. Secondly, the clerk is required to post, prior to 4:00 o'clock in the afternoon following nomination day, a list setting out the name and residence of every candidate whose nomination has been certified in order of certification. Previously this list had to be posted prior to the time fixed for closing of nominations.

Ballots Section 36, 43
[Section 34, 41]

2.27 The occupation of a candidate used to be required on the nomination form and the ballot. This requirement has now been deleted. The occupation cannot be shown on either the nomination form or the ballot.

Employees To Have Three Consecutive Hours For Voting Section 49(2)(3)
[Section 47]

2.28 The Act has been changed to provide that an employer shall give an employee who is a qualified elector and, who by reason of the hours of his employment will not have three consecutive hours for voting, such time as is necessary to provide three consecutive hours. The time shall be at the convenience of the employer and the employer shall not make any deduction or exact any penalty for the time allowed.

2.29 While this section will not directly affect the clerks procedures in conducting the election, he may receive inquiries in this regard.

Poll Books No Longer Required Section 55
[Section 53]

2.30 Poll books will no longer be used in municipal elections. Past procedure required that the poll clerk write the name and address of the elector in the poll book. The poll clerk also had to note which ballots were given to the voter by initialling the appropriate columns in the poll book.

2.31 Some deputy returning officers were experiencing delays because of the amount of time it took the poll clerk to record the required information.

2.32 In order to speed up the process the new legislation provides that the poll clerk shall use a duplicate copy of the polling list to strike off the names of each voter thereby indicating that he has voted.

2.33 The poll clerk must also place a consecutive number beside the voter's name. For instance, if the voter is the 23rd person to vote at the poll, the number 23 is placed beside his name. The next voter would be number 24 and so numbered on the list. The Ministry of Revenue is currently reviewing the voters list format with a view to accommodating these changes.

2.34 As this change will directly affect all deputy returning officers and poll clerks and represents a major departure from previous procedure, it is very important that each Returning Officer give careful instructions to the D.R.O. and poll clerk.

2.35 The returning officer should also ensure that the layout of the voters list provides sufficient room beside the name of the electors, to make the required notations referred to previously.

Proxy Certificates Section 67(5)
[Section 65(5)]

2.36 The time during which a person may apply to the clerk for a certificate to vote by proxy has been extended to 5:00 o'clock in the afternoon of polling day. Previously the last day was the Tuesday preceding polling day.

Emergency Situations - Clerk's Powers Section 69
[Section 67]

2.37 This section gives the clerk full authority to deal with an emergency situation. If circumstances arise that in the opinion of the clerk he should delay the opening of any polling place or cause the discontinuance of polling, he may declare an emergency.

2.38 He is empowered to make any arrangements advisable for the conduct of the poll and the safekeeping of the election documents. The circumstances vary considerably in each municipality and an emergency plan can only be developed by the clerk who is aware of the existing situation.

Recounts Section 83
[Section 81]

2.39 There have been certain technical changes made to the section of the Act dealing with recounts.

2.40 When a judge decides to hold a recount based upon an application by an elector he will now give the clerk at least 10 days notice of the date set for the recount. Previous legislation did not specify the number of days notice that the judge should give the clerk.

2.41 The clerk is required to give at least six days notice of the date set for the recount to the candidates and applicant. Before only two days notice were required.

2.42 A new subsection has been added giving a judge the right during a recount to recount the votes cast for any other candidate whose election or right to any other offices may be affected.

2.43 Upon completion of a recount, the judge will announce the results. After the time for appeal has expired, the judge will have the ballots sealed in packages and returned to the clerk. This change merely clarifies the procedure for handling the ballots during the time that an appeal of the recount may be lodged and should have no major impact on the clerk.

Equality of Votes Section 85
[Section 83]

2.44 For the purpose of determining the successful candidate where there is an equality of votes after a recount, the clerk shall conduct a lot. The Act now clarifies the meaning of "lot". Lot means the method of determining the successful candidate by placing the names of the candidates on equal size pieces of paper placed in a box and one name being drawn by a person chosen by the clerk.

Council Decisions Where Election Of Member Set Aside Section 112
[Section 110]

2.45 A new subsection has been added to clarify the status of decisions made by council with the participation of a member whose election is subsequently set aside.

2.46 All decisions of the council are valid and unaffected by such participation.

Optional Use Of French Language Notices Section 119

2.47 The legislation now provides that a municipal council may choose to print notices in the French language as well as English.

Candidate's Election Expenses Section 121

2.48 A new provision has been added to the legislation allowing council to set a limitation on election expenditures by candidates and require disclosure of election contributions over \$100.00. The section is permissive and must be implemented by by-law. Clerks will likely want to bring this new section to the attention of the council.

Voting Under Liquor Licence Act, 1975 Section 122

2.49 The Municipal Elections Act has been changed to provide that the provisions of this act apply to a vote held under the provisions of The Liquor Licence Act, 1975. Previously the provisions of The Elections Act (that governs elections to the Provincial Assembly) applied. This change should make it much easier for the clerk who is faced with a liquor vote as well as a municipal election.

* * * * *

The changes referred to in this paper have been made in an attempt to further eliminate problems in the conducting of municipal elections and to ensure that every effort is made to afford the electorate the opportunity to exercise its vote conveniently and with complete security.

Copies of The Municipal Elections Act, 1977 may be obtained from:

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